88-228

No. .

Supreme Court, U.S.
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In the
Supreme Court of the United States.

OCTOBER TERM, 1988

JEFFREY ST. HILAIRE,
APPELLANT,

v.

STATE OF MAINE,
APPELLEE.

APPEAL FROM THE SUPREME JUDICIAL COURT OF MAINE.

JURISDICTIONAL STATEMENT.

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July 29, 1988

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50 pp

Questions Presented.

I. Whether the Maine Habitual Offender Statute, 29 M.R.S.A. § 2298, is unconstitutional: 1) by allowing conviction of a felony after an incorrect designation without actual notice; 2) by prohibiting Appellant's evidence showing the designation was incorrect, violating Fifth Amendment due process; or 3) by resting upon an unreliable, uncounseled prior conviction, violating the Sixth Amendment right to counsel.

II. Whether the Maine statute 29 M.R.S.A. § 58, permitting use of a hearsay certificate, is unconstitutional: 1) by prohibiting Appellant's Sixth Amendment right to confront his accuser; 2) by prohibiting Appellant's cross-examination; or 3) by establishing a conclusive presumption, violating Fifth Amendment due process.

Table of Contents.

Questions presented	i
Table of authorities cited	iv
Opinions below	1
Jurisdiction	2
Constitutional provisions and state statutes involved	3
Statement of the case	6
I. Question I is substantial	8
A. The Maine Habitual Offender Penalty, 29 M.R. S.A. Section 2298, as interpreted and applied by the Maine Supreme Judicial Court, violates due process and the violation should be corrected	8
B. The Maine Habitual Offender Statute infringes upon Appellant's Sixth Amendment right to counsel which should be corrected by this Court	10
II. Question II is substantial	12
A. The Maine statute 29 M.R.S.A. Section 58 violates Appellant's Sixth Amendment Confrontation Clause rights and will so continue against others accused until correction by this Court	12
B. The procedural statute 29 M.R.S.A. Section 58 establishes a conclusive presumption against Appellant violating due process and will so continue until corrected by this Court	14
Conclusion	15
Appendix	follows page 15

Table of Authorities Cited.

Cases.

Argersinger v. Hamlin, 407 U.S. 25 (1972)	13
Baldasar v. Illinois, 446 U.S. 222 (1980)	11
Burgett v. Texas, 389 U.S. 109 (1967)	11
Chambers v. Mississippi, 410 U.S. 284 (1973)	10, 12, 13
Chapman v. California, 386 U.S. 18 (1967)	12
Coy v. Iowa, 56 U.S.L.W. 4931 (U.S. June 29, 1988)	12
Davis v. Alaska, 415 U.S. 308 (1974)	12
Delaware v. Van Arsdall, 475 U.S. 673 (1986)	12
District of Columbia v. Clawans, 300 U.S. 617 (1937)	12, 13
In re Winship, 397 U.S. 358 (1970)	9, 10, 14
Lewis v. United States, 445 U.S. 55 (1980)	9, 11
Loper v. Beto, 405 U.S. 473 (1972)	11
Martin v. Ohio, 480 U.S. 228 (1987)	9, 14
Miranda v. Arizona, 384 U.S. 436 (1966)	11
Mullaney v. Wilbur, 421 U.S. 684 (1975)	9, 14
Patterson v. New York, 432 U.S. 197 (1977)	9, 14
Speiser v. Randall, 357 U.S. 513 (1958)	10
United States v. King, 587 F.2d 956 (9th Cir. 1978)	9
United States v. Tucker, 404 U.S. 443 (1972)	11

Constitutional Provisions.

United States Constitution	
Fifth Amendment	2, 3, 6, 11, 12
Sixth Amendment	2, 3, 6, 10, 11 et seq.

STATUTORY PROVISIONS.

28 U.S.C. § 1257(2)	3
28 U.S.C. § 2103	15
29 M.R.S.A. § 58	2, 4, 7, 12, 14
29 M.R.S.A. § 2292(4) (Supp. 1987)	4
29 M.R.S.A. § 2294 (Supp. 1987)	4, 5, 7, 10, 13
29 M.R.S.A. § 2298	2, 5, 6, 8

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STATE OF MAINE,
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APPEAL FROM THE SUPREME JUDICIAL COURT OF MAINE.

JURISDICTIONAL STATEMENT.

Opinions Below.

The Opinion of the Maine Supreme Judicial Court appears in Appendix A, p. 1a, *infra* and is reported at A.2d (Me. 1988). The Order of the Oxford Superior Court, State of Maine, is not reported and appears in Appendix B, p. 6a, *infra*. Its Opinion is not reported, but appears in the trial transcript in Appendix C, p. 8a, *infra*.

Jurisdiction.

Appellant St. Hilaire appeals his felony conviction in the Oxford Superior Court of the charge of Operating While Being an Habitual Offender, 29 M.R.S.A. § 2298. After selection of the jury, the State moved to bar Appellant from confronting or cross-examining the State's chief witness, or offering other evidence regarding the correctness of the Secretary of State's designation of Appellant as an Habitual Offender, an element of the felony charged (Appendix B, p. 6a). The Oxford Superior Court granted the State's Motion, thereby prohibiting Appellant from offering proof of facts tending to show his innocence (Appendix B, E, pp. 6a, 20a). The State proved Appellant's status as an Habitual Offender by means of a hearsay certificate of the Secretary of State offered pursuant to a procedural statute of Maine, 29 M.R.S.A. § 58, not through any witness. Further, no proof was introduced or required to show Appellant had ever received actual notice, prior to his arrest, of his administrative designation as an Habitual Offender.

On appeal to the Maine Supreme Judicial Court, Appellant explicitly asserted the unconstitutionality of 29 M.R.S.A. § 58 insofar as it permitted use of a certificate to establish an element of the offense charged, asserting that the Statute violated his Sixth Amendment right to confront and cross-examine the witnesses against him. He also challenged, as a violation of Fifth Amendment due process, the conclusive presumption created in effect by 29 M.R.S.A. §§ 58 and 2298, in eliminating his right to present evidence in his defense. Finally, Appellant challenged 29 M.R.S.A. § 2298 as a violation of his Sixth Amendment right to counsel in that it permitted a conviction to be based, in part, upon an uncounseled, unreliable prior conviction and without proof of actual notice or correct designation of Habitual Offender status in violation of Fifth Amendment due process. Appellant provides his Statement of Issues

and Summary before the Maine Supreme Judicial Court in Appendix F, p. 24a, *infra*.

The Maine Supreme Judicial Court affirmed the judgment. It upheld the Maine Habitual Offender Statute, stating that the statute did not require a correct designation of Habitual Offender status nor actual notice to Appellant of the designation. By implication, it upheld and approved use of the certificate of the Secretary of State to prove that status and denied Appellant's challenges under the United States Constitution.

Jurisdiction of this Court exists pursuant to 28 U.S.C. § 1257(2).

The Opinion of the Supreme Judicial Court of Maine was entered on June 30, 1988 (Appendix A, p. 1a, *infra*). Notice of Appeal to this Court and Proof of Service was filed with the Maine Supreme Judicial Court on July 5, 1988 (Appendix D, p. 16a, *infra*).

Constitutional Provisions and State Statutes Involved.

United States Constitution, Amendment V:

> No person shall be . . . deprived of life, liberty, or property, without due process of law . . .

United States Constitution, Amendment VI:

> In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

29 M.R.S.A. § 58 (Supp. 1987), titled "Certificate as evidence" provides:

> Notwithstanding any other provision of law or rule of evidence, the certificate of the Secretary of State or his deputy, under seal of the State, shall be received in any court in this State as prima facie evidence of any fact stated in the certificate or documents attached thereto.

29 M.R.S.A. § 2292(4) (Supp. 1987), titled "Exceptions" provides:

> A person may not be an habitual offender for the purposes of this chapter when:
>
> * * *
>
> C. A person is convicted of the offense of operating a motor vehicle when his license, permit or privilege to operate has been suspended when the suspension is based upon his failure to appear in court or failure to pay his fine.

29 M.R.S.A. § 2294 (Supp. 1987), titled "Hearing procedure" provides:

> 2. *Issues*. If after hearing, the Secretary of State or his deputy finds that the person is not the same person named in the transcript or abstract and that the person's record does not bring him within the definition of an habitual offender . . . then the revocation shall be rescinded, but if the Secretary of State finds that the person is the same person named in the transcript or abstract and that the person's record brings him within the definition of an habitual offender, then the Secretary of State or his deputy shall

find the person to be an habitual offender and the revocation shall be invoked.

3. *Presumptions*. At the hearing the Secretary of State or his deputy may take official notice of the transcripts or abstracts. If the name and date of birth of the person requesting the hearing is the same as the name and date of birth of the person who is named in the transcript or abstracts, then the abstracts shall be prima facie evidence of that person's identity. The transcripts or abstracts shall also be prima facie evidence that the person named therein was duly convicted or adjudicated by the court, wherein the conviction or adjudication was made, of each offense shown by the transcripts or abstracts, and if the person shall deny any of the facts as stated, he shall have the burden of proving that those facts are untrue.

29 M.R.S.A. § 2298 (Supp. 1987), titled "Penalty" provides:

> It shall be unlawful for any person to operate any vehicle on a public way . . . in this State while the revocation prohibiting its operation remains in effect. Any person found to be an habitual offender under this chapter . . . who is thereafter convicted of operating a motor vehicle in this State while the revocation prohibiting operation is in effect shall have committed a Class C crime.
>
> * * *
>
> If the name and date of birth of the person being prosecuted under this section are the same as the habitual offender whose privilege to operate has been revoked, then there shall be a presumption that that person is the same person whose license was revoked under this chapter.

Statement of the Case.

Appellant was indicted on the Class C felony of Operating After Having Been Declared an Habitual Offender under 29 M.R.S.A. § 2298.

Following selection of a jury on November 17, 1987, the State, for the first time, moved to exclude all evidence on the correctness of the Secretary of State's designation of the Defendant as an Habitual Offender (Appendix B, p. 6a). Caught by surprise, Appellant argued against the motion raising fundamental values protected by the Due Process Clause, including: the right to a jury trial; the presumption of his innocence; and the requirement of proof beyond a reasonable doubt as to all elements of the offense charged. As argued by Appellant's counsel at trial:

> We're raising a question of fact. This is the quintessential province of the jury in this case, and it is their duty to determine the facts of whether a crime occurred.
>
> It's our position that what the State is attempting to do here is take the case away from the jury entirely and that it's absolutely not possible under the law that — that the acts of the Secretary of State declaring him an habitual offender couldn't be questioned.
>
> They are in question. They will be questioned. That's how I'm going to prove my client is innocent."

These fundamental values and notions of fair play are protected by the Fifth Amendment Due Process Clause and the Sixth Amendment Confrontation Clause.

The Oxford Superior Court granted the State's Motion In Limine and, thus prevented Appellant from proving facts material

to his defense. Appellant made an offer of proof. (The most important documents offered appear in Appendix E, p. 20a.)

During the brief trial, Appellant attempted to cross-examine the arresting officer with respect to the correctness of his computer license check. The Court sustained the State's objection to this line of examination. The State offered no witness to prove the validity of Appellant's alleged Habitual Offender status. Instead, the State, pursuant to 29 M.R.S.A. § 58, offered an unreliable hearsay statement to prove Habitual Offender status. Further, the State failed to prove that Appellant had any actual notice of his purported designation as an Habitual Offender.

Appellant moved for judgment of acquittal, citing lack of evidence of correct Habitual Offender status and of actual notice to defendant. His motion was denied.

Appellant tried to confront and cross-examine the Maine Secretary of State. Because the Secretary of State was then hospitalized and unavailable, Appellant subpoenaed the Secretary's Deputy and his Chief Hearing Examiner. He sought to show their lack of authority to claim that he was under suspension on March 25, 1986 with respect to an underlying misdemeanor conviction for Operating After Suspension because public records declared that his license was restored on the very date. St. Hilaire had no counsel on that charge. He also offered public records showing that he had paid a license reinstatement fee five days earlier. Consequently, the underlying misdemeanor resulted from bureaucratic delay and computer error. All Appellant's evidence was excluded.

In his brief on appeal to the Maine Supreme Judicial Court (Appendix F, p. 24a), Appellant raised explicit challenges to both statutes under the United States Constitution. Also, he argued that he had no opportunity to challenge the correctness of the Secretary's label because the only issue on administrative appeal is his identity. 29 M.R.S.A. § 2294. The Maine Su-

preme Judicial Court rejected all his arguments treating only some explicitly.

Question I Is Substantial.

A. The Maine Habitual Offender Penalty, 29 M.R.S.A. Section 2298, as Interpreted and Applied by the Maine Supreme Judicial Court, Violates Due Process and the Violation Should be Corrected.

As interpreted by the Maine Supreme Judicial Court, the Maine Habitual Offender Statute permits conviction of a felony offense by computer or by a bureaucrat without consideration of the facts by the jury. By interpreting the felony to apply regardless of actual notice to the accused and regardless of whether the status upon which it is based is correct, and by prohibiting an accused's inquiry into those facts, the Court has construed the crime to exist upon mere proof as to the identity of the accused. The Statute and its interpretation exceed constitutional limits addressed by the Supreme Court when it said:

> "'[I]t is not within the province of a legislature to declare an individual guilty or presumptively guilty of a crime.' *McFarland* v. *American Sugar Rfg. Co.*, 241 U.S. 79, 86, 36 S.Ct. 498, 500, 60 L.Ed. 899 (1916). The legislature cannot 'validly command that the finding of indictment, or mere proof of the identity of the accused, should create a presumption of the existence of all the facts essential to guilt.' *Tot* v. *United States*, 319 U.S. 463, 469, 63 S.Ct. 1241, 1246, 87 L.Ed. 1519 (1943). *See also Speiser* v. *Randall*, 357 U.S., at 523-525, 78 S.Ct., at 1340-

> 1341; *Morrison* v. *California*, 291 U.S. 82, 54 S.Ct. 281, 78 L.Ed. 664 (1934), also makes the point with sufficient clarity."

Patterson v. *New York*, 432 U.S. 197, 210 (1977). The current definition of the crime reduces and eliminates the prosecution's burden of proof to the detriment of the Defendant who may be innocently mislabelled an habitual offender and who may be unaware he has been so designated. That definition unhinges the presumption of innocence in violation of Due Process. *Id.* nn. 12, 13.

The elements of notice and of the correctness of the designation must be pleaded and proved by the State under the Due Process Clause. *In re Winship*, 397 U.S. 358 (1970); *Mullaney* v. *Wilbur*, 421 U.S. 684 (1975); *Patterson* v. *New York*, *supra*; *Martin* v. *Ohio*, 480 U.S. 228 (1987); *United States* v. *King*, 587 F.2d 956 (9th Cir. 1978). At the very least, if a crime may be proved without proof that an underlying status is correct, actual notice or some *mens rea* must exist. *See Lewis* v. *United States*, 445 U.S. 55 (1980). Without proof of actual notice of an incorrect designation, an accused has no means to correct the label. Therefore, both elements may not be eliminated without offending fundamental fairness guaranteed by the Due Process Clause. Nevertheless, the Maine Supreme Judicial Court stated that:

> The correctness of this designation is not in issue. Neither does the statute require the State to prove St. Hilaire received actual notice of the designation. 29 M.R.S.A. Section 2298.

Although the Maine Court recites that Appellant does not dispute his habitual offender status on the date January 1, 1987,

he most certainly does. Appellant further asserts that he challenged the designation applied, but the statutes deny him a fundamental right to correct that label. An administrative appeal includes only the issue of the identity of the accused, not the propriety of the designation. 29 M.R.S.A. § 2294. The Maine Supreme Judicial Court ignored this deprivation of due process and construed the felony to exist without any avenue to correct or challenge the label.

The Maine Supreme Judicial Court has gone beyond constitutional bounds by prohibiting an accused from admitting at trial any evidence that the designation is incorrect, thereby creating a substantial risk that innocent persons will be convicted. "Few rights are more fundamental than that of an accused to present witnesses in his own defense." *Chambers* v. *Mississippi*, 410 U.S. 284, 302 (1973). The exclusion "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *Speiser* v. *Randall*, 357 U.S. 513, 523 (1958). The interpretation is a profound dilution of the presumption of innocence and directly contrary to this Court's teaching. The interpretation subverts a fundamental value of our society that "it is far worse to convict an innocent man than to let a guilty man go free." *In re Winship, supra* at 372 (Harlan, J., concurring). Any individual operating a motor vehicle on a public way in the State of Maine is susceptible to conviction under this statute because he need not be notified of the habitual offender designation and the designation may be incorrect.

B. The Maine Habitual Offender Statute Infringes Upon Appellant's Sixth Amendment Right to Counsel Which Should Be Corrected by This Court.

In this case, Appellant suffered an uncounseled conviction, although he thought he had pleaded innocent. The use of a prior

criminal conviction that is constitutionally unfirm is inherently prejudicial. *Burgett* v. *Texas,* 389 U.S. 109 (1967). Here, it was particularly unreliable because official records showed Appellant's license to be restored on the very date that he was convicted of being under suspension, March 25, 1986. The unreliability of that past, uncounseled conviction prohibited its use because it is a violation of the Sixth Amendment right to counsel. *Id.*; *Baldasar* v. *Illinois,* 446 U.S. 222 (1980); *United States* v. *Tucker,* 404 U.S. 443 (1972); *Loper* v. *Beto,* 405 U.S. 473 (1972).

In addition, without proof that Appellant's statements were intelligently and knowingly made with regard to the entry of the guilty plea, the use of the prior uncounseled misdemeanor plea is equivalent to the use of a statement against Appellant in violation of his Fifth Amendment right against self-incrimination. *Miranda* v. *Arizona,* 384 U.S. 436 (1966).

Unlike some uses of prior uncounseled convictions approved by this Court, the use of the challenged misdemeanor conviction in this case occurred without proof of notice to the accused in violation of Appellant's Sixth Amendment right to counsel. *See Lewis* v. *United States,* 445 U.S. 55 (1980). In further contrast, the unreliable, uncounseled prior misdemeanor conviction was used in this case to prove a more severe crime, a felony, while the use approved by this Court has been that of a felony conviction with respect to a subsequent misdemeanor. *Id.*

The above violations of the Fifth and Sixth Amendment raise substantial federal questions that should be addressed by this Court to protect every operator of a motor vehicle on a public way in Maine.

Question II Is Substantial.

A. The Maine Statute 29 M.R.S.A. Section 58 Violates Appellant's Sixth Amendment Confrontation Clause Rights and Will So Continue Against Others Accused Until Correction by This Court.

The procedure used against Appellant to prove the felony charged violated his Sixth Amendment right to confront and cross-examine the witnesses against him and his Fifth Amendment due process rights to be free of conclusive presumptions. In a decision of this Court one day prior to that of the Maine Supreme Judicial Court, this Court upheld the Sixth Amendment right of the accused to confront his accuser face to face. *Coy* v. *Iowa*, 56 U.S.L.W. 4931 (U.S. June 29, 1988). The history and significance of the right to see and be seen by one's accuser and to have the jury assess every detail of that face-to-face confrontation were well described in *Coy*. In this case, the absence of that confrontation and the substitution of an official looking paper bearing the Seal of the State of Maine may have given the jury the impression of guilt, thereby eroding the presumption of innocence. Moreover, Appellant sought to confront the Secretary of State on his authority to declare Appellant under license suspension on the same date that his license was restored. Appellant raised these rights before the Maine Supreme Judicial Court. As the certificate in question constituted the only proof of an element of the offense charged, the Confrontation Clause error was harmful. *Chapman* v. *California*, 386 U.S. 18 (1967); *Delaware* v. *Van Arsdall*, 475 U.S. 673 (1986).

The Confrontation Clause also provides the right to cross-examine adverse witnesses. *Chambers* v. *Mississippi*, 410 U.S. 284 (1973); *Davis* v. *Alaska*, 415 U.S. 308 (1974); *District of Columbia* v. *Clawans*, 300 U.S. 617 (1937). Appellant

sought to cross-examine the Secretary on the computer error or bureaucratic delay causing the underlying misdemeanor conviction and resulting habitual offender designation. No witness has a right to protection from being discredited on cross-examination. Any accused who may be deprived of his liberty is entitled to "his day in court, including at a minimum the right to examine witnesses, offer testimony, and be represented by counsel." *Argersinger* v. *Hamlin*, 407 U.S. 25 (1972). That fundamental right of cross-examination was clarified by the Supreme Court long before the Court clarified the meaning of the right to counsel. *Id.* Further, it is of wider scope than the right to trial by jury, because it applies even to petty offenses in which the right to trial by jury and the right to counsel may be absent. *District of Columbia* v. *Clawans, supra.*

The exclusion of Appellant's evidence ordered by the Oxford Superior Court and affirmed by the Maine Supreme Judicial Court, prevented Appellant from cross-examining the Deputy Secretary of State and his Chief Hearing Examiner. Appellant himself had subpoenaed these witnesses. The exclusionary ruling violated both his right to cross-examine and his right to present witnesses in his own defense. As noted above, the appellate rights provided by statute following designation as an Habitual Offender do not address the means of notice or the correctness of the label and place the burden of proof upon a petitioner. 29 M.R.S.A. § 2294. Hence, Appellant had no right of confrontation in any other forum. He was consequently denied trial in accord with traditional and fundamental standards of due process and in violation of the Sixth Amendment. *Chambers* v. *Mississippi, supra.*

B. THE PROCEDURAL STATUTE 29 M.R.S.A. SECTION 58 ESTABLISHES A CONCLUSIVE PRESUMPTION AGAINST APPELLANT VIOLATING DUE PROCESS AND WILL SO CONTINUE UNTIL CORRECTED BY THIS COURT.

The State's use of an incorrect hearsay certificate of the Secretary of State, and the exclusion of Appellant's evidence in rebuttal and in defense, created a conclusive presumption against him in violation of his Fifth Amendment due process rights. Appellant unsuccessfully raised these rights before the Maine Supreme Judicial Court. The use of that conclusive presumption violates Due Process. *In re Winship, supra*; *Mullaney* v. *Wilbur, supra*; *Patterson* v. *New York, supra*; *Martin* v. *Ohio, supra*. The presumption established by 29 M.R.S.A. § 58 exposes all motor vehicle operators in Maine to criminal conviction based upon violations of constitutionally protected procedural rights. Only this Court can correct the current situation. The Maine courts and the Maine Legislature need guidance from this Court on the constitutional limits of Maine's current criminal justice procedures in Habitual Offender cases.

Conclusion.

Probable Jurisdiction of the Appeal should be noted, or in the alternative, this Appeal treated as an Application for a Writ of Certiorari pursuant to 28 U.S.C. § 2103.

Respectfully submitted,

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Appendix.

Table of Contents.

Appendix A

Opinion, Maine Supreme Judicial Court, June 30, 1988 1a

Appendix B

Order, Oxford Superior Court, and Motion in Limine, November 17, 1987 6a

Appendix C

Trial proceedings, Appellant's Argument and Opinion on Motion in Limine, Oxford Superior Court, November 17, 1987 8a

Appendix D

Notice of Appeal to Maine Supreme Judicial Court and Proof of Service, July 5, 1988 16a

Appendix E

Defendant's Proposed Trial Exhibit 5 20a

Appendix F

Appellant's Statement of Issues and Summary before the Maine Supreme Judicial Court 24a

Appendix A.

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. 4799
Law Docket No. Oxf-87-506

STATE OF MAINE

v.

JEFFREY ST. HILAIRE

Argued May 4, 1988
Decided June 30, 1988

Before McKUSICK, C.J., ROBERTS, WATHEN, GLASSMAN and SCOLNIK, JJ.

ROBERTS, J.

Jeffrey St. Hilaire appeals from a judgment of the Superior Court, Oxford County, entered on a jury verdict finding St. Hilaire guilty of operating a motor vehicle while an habitual offender, 29 M.R.S.A. § 2298 (Supp. 1987) (Class C).[1] St. Hilaire challenges the court's exclusion of evidence and claims the indictment is void. In addition, St. Hilaire challenges the sufficiency of the evidence to support the verdict of the jury. Because these claims are without merit, we affirm the judgment.

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[1] Section 2298 provides, in relevant part:

It shall be unlawful for any person to operate any motor vehicle on a public way . . . in this State while the revocation prohibiting its operation remains in effect. Any person found to be an habitual offender . . . who is thereafter convicted of operating a motor vehicle in this State while the revocation prohibiting operation is in effect shall have committed a Class C crime.

On January 1, 1987, a state police officer stopped St. Hilaire for speeding on Route 5 in Fryeburg. The officer's license check revealed that St. Hilaire was under habitual offender status at the time of the stop. A certified copy of St. Hilaire's license record from the Secretary of State verified St. Hilaire's habitual offender status as of January 1, 1987. St. Hilaire does not dispute these facts established at trial.

On motion by the State, the Superior Court excluded the following evidence concerning the offenses underlying St. Hilaire's habitual offender designation and his attempts, initiated after indictment in the instant case, to have his habitual offender designation vacated. As a result of repeat violations, St. Hilaire's license was suspended effective December 2, 1985. On March 20, 1986, after the fixed suspension period had expired, St. Hilaire paid the reinstatement fee. St. Hilaire was stopped on March 25, 1986 and a license check disclosed that his license was still under suspension. As a result of this stop, St. Hilaire was convicted on an uncounseled guilty plea for operating after suspension, 29 M.R.S.A. § 2184 (Supp. 1987) (OAS). St. Hilaire paid the $50 fine imposed by the court.

In July 1986, the Secretary of State notified St. Hilaire that as a result of the OAS and two prior convictions, he had been designated an habitual offender.[2] St. Hilaire did not request an administrative hearing to review the action of the Secretary of State.

On January 1, 1987, when St. Hilaire was stopped for speeding, he was under habitual offender status due to the unchallenged July 1986 designation. After his indictment in the instant

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[2] An habitual offender is any person whose record, as maintained by the Secretary of State, shows that the person has accumulated three or more convictions or adjudications within a five year period for the offenses set out in 29 M.R.S.A. § 2292 (Supp. 1987). *State* v. *O'Neill*, 473 A.2d 415, 417 (Me. 1984).

case, St. Hilaire commenced a series of actions challenging his July 1986 habitual offender designation and the underlying OAS conviction. His March 1987 request for an administrative hearing to review the designation was denied by the Secretary of State as untimely.[3] However, St. Hilaire's motion to vacate the OAS conviction was granted by the District Court (Lewiston) on May 29, 1987.[4] The Secretary of State subsequently vacated St. Hilaire's habitual offender designation and removed the OAS conviction from its records.

In this appeal, St. Hilaire contends that the Superior Court erred in granting the State's motion in limine excluding the evidence pertaining to the correctness of the Secretary of State's designation of St. Hilaire as an habitual offender. We disagree. The only issue in this litigation is St. Hilaire's status at the time of operation on January 1, 1987. The State need only prove that St. Hilaire was subject to a "then-effective order" under the habitual offender statute. *State* v. *Vosmus*, 431 A.2d 621, 623 (Me. 1981). On January 1, 1987, St. Hilaire was subject to an unchallenged order of the Secretary of State that classified him as an habitual offender. All the evidence St. Hilaire sought to admit at trial goes to St. Hilaire's status after March 1987, and was properly excluded as irrelevant.

St. Hilaire also contends that the indictment in the instant case is void. He charges that the indictment impermissibly

---

[3] Clearly, St. Hilaire's March 1987 request for an administrative hearing of the July 1986 designation is untimely pursuant to 29 M.R.S.A. § 2294(1) (Supp. 1987), which allows 30 days to challenge the action of the Secretary of State. Nevertheless, St. Hilaire has appealed the denial pursuant to M.R. Civ. P. 80C. The action has been stayed pending the outcome of the instant appeal.

[4] St. Hilaire was not entitled to vacation of the conviction after he paid the fine imposed by the court. *Cf. State* v. *Haskell*, 492 A.2d 1265, 1266 (Me. 1985); *State* v. *Lewis*, 406 A.2d 886, 888 (Me. 1979) (voluntary payment of a fine terminates the action and leaves nothing upon which an appeal might operate.) The State, however, did not oppose the motion and subsequently dismissed the OAS complaint.

recites, for the purpose of sentence enhancement, an offense for which St. Hilaire was not represented by counsel and that the indictment fails to allege that the Secretary of State's action was legally correct. Even if St. Hilaire's arguments had merit,[5] he cannot raise them in the instant appeal. His attempt to do so amounts to an impermissible attempt to relitigate the Secretary of State's designation and the underlying OAS conviction. Because St. Hilaire failed to pursue his statutory right to a hearing on the Secretary of State's action, he allowed that decision to become final. He cannot now challenge his original designation as an habitual offender in this appeal from the judgment of conviction for operating while an habitual offender. *Maines* v. *Secretary of State*, 493 A.2d 326 (Me.), *cert. denied*, 474 U.S. 947 (1985); *Piacitelli* v. *Quinn*, 449 A.2d 1126 (Me. 1982); *State* v. *Albert*, 418 A.2d at 191-92.

St. Hilaire's contention that his OAS conviction is void "*ab initio*" and thus improperly used to establish his habitual offender status must be rejected on the same grounds. *Id. See also State* v. *Higgins*, 338 A.2d 159 (Me. 1975) (In appeal from judgment of conviction for OAS, Court refused to allow defendant to contest the constitutionality of statutory provisions pursuant to which his license was initially suspended).

Finally, St. Hilaire challenges the sufficiency of the evidence to support the verdict of the jury. In order to convict St. Hilaire, the State was required to prove, beyond a reasonable doubt, that St. Hilaire "operate[d] [a] motor vehicle on a public way . . .

---

[5] *See State* v. *O'Neill*, 473 A.2d at 417-19 (Use of uncounseled OUI conviction as basis in part for reclassification as habitual offender; reclassification may be predicate for imposition of imprisonment upon conviction of operating while an habitual offender). *See also Lewis* v. *United States*, 445 U.S. 55, 66-67 (1980) (Uncounseled conviction is not invalid for all purposes); *State* v. *Albert*, 418 A.2d 190, 191 (Me. 1980). The indictment need not allege that the Secretary of State's designation is legally correct because the correctness of the designation is not an essential element of the offense. *See State* v. *O'Neill*, 473 A.2d at 419 (The focus is not on the reliability of the underlying conviction, but on the "mere fact" of conviction or adjudication of habitual offender status).

while the revocation prohibiting its operation remain[ed] in effect." 29 M.R.S.A. § 2298. St. Hilaire does not dispute the fact that he was operating a motor vehicle on a public way. Rather, St. Hilaire contends that the State should be required to prove, as part of its case in chief, that he was properly declared an habitual offender, and that he received actual notice of his habitual offender designation.

The State need only prove that at the time of operation, St. Hilaire was subject to a "then-effective" order under the habitual offender statute. *State* v. *Vosmus*, 431 A.2d at 623. The evidence clearly shows that at the time of the stop, the records of the Secretary of State classified St. Hilaire as an habitual offender. The correctness of this designation is not in issue. Neither does the statute require the State to prove St. Hilaire received actual notice of the designation. 29 M.R.S.A. § 2298. *Cf. State* v. *Kovtuschenko*, 521 A.2d 718, 719 (Me. 1987) (Statute prohibiting operation after license is suspended, 29 M.R.S.A. § 2184 (Supp. 1987), which requires written notice, but not actual notice of suspension, does not violate due process). Our review of the record discloses sufficient evidence for the jury rationally to have found, beyond a reasonable doubt, the elements of the offense charged. *State* v. *Barry*, 495 A.2d 825, 826 (Me. 1985).

The entry is:

Judgment affirmed.

All concurring.

Attorneys for the State:
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District Attorney
Patricia A. Mador, Esq. (orally)
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NOTICE: This opinion is subject to formal revision before publication in the Maine Reporter. Readers are requested to notify the Reporter of Decisions, Box 368, Portland, Me. 04112, of any typographical or other formal errors before the opinion goes to press.

Appendix B.

STATE OF MAINE OXFORD, SS.	SUPERIOR COURT CRIMINAL ACTION DOCKET NO. CR 87-51

STATE OF MAINE	*	
	*	
VS.	*	MOTION IN LIMINE
	*	
JEFFREY ST. HILAIRE	*	

Now comes the State of Maine and moves this court *in limine* to exclude testimony on the issue of whether or not the Secretary of State acted properly in declaring the defendant an Habitual Offender, for the following reasons:

1. The defendant cannot in the pending prosecution for driving after having been declared a Habitual Offender avoid conviction by leveling a collateral attack against the action of the Secretary of State as taken in a separate proceeding. *State* v. *Higgins*, 338 A.2d 159 (Me. 1975), *State* v. *Albert*, 418 A.2d 190 (Me. 1980); *Piacitelli* v. *Quinn*, 449 A.2d 1126 (Me. 1982); *State* v. *O'Neill*, 473 A.2d 415 (Me. 1984) and *Maines* v. *Secretary of State*, 493 A.2d 326 (Me. 1985).

2. This issue had been raised by the defendant in a prior Motion to Quash the Indictment, which was denied.

Wherefore, the State respectfully requests the testimony be excluded, and that the issues be limited to (1) was the defendant

operating a motor vehicle and (2) was the defendant a Habitual Offender.

Dated: November 17, 1987

Patricia A. Mador
Assistant District Attorney

ORDER

The above motion is hereby (granted) (denied).
Dated: November 17, 1987

Justice, Superior Court

Appendix C.

STATE OF MAINE	SUPERIOR COURT CRIMINAL ACTION
OXFORD, ss.	Docket No. CR-87-51 Law Docket No. OXF-87-506

STATE OF MAINE,)
)
Plaintiff)
)
vs)
)
JEFFREY ST. HILAIRE,)
)
Defendant)

TRIAL PROCEEDINGS
(with jury)

BEFORE:
HONORABLE PAUL A. FRITZSCHE, JUSTICE OF THE SUPERIOR COURT

Oxford County Courthouse
South Paris, Maine

November 17, 1987
1:21 p.m.

APPEARANCES:

For the Plaintiff: PATRICIA A. MADOR, Esq.
For the Defendant: NERIA R. DOUGLASS, Esq.

Penny L. Philbrick
Official Court Reporter

[2]

Transcript of Proceedings

(This trial came on for hearing before the Honorable Paul A. Fritzsche, Justice, and a jury impaneled, accepted and sworn, at the Oxford County Courthouse, South Paris, Maine, on Tuesday, November 17, 1987, commencing at 1:21 p.m.)

THE COURT: We have, I believe, two matters that I'm aware of to discuss before the case begins.

The first is a motion *in limine*, which just simply means a motion before a case begins, of the State which seeks to limit the issues and exclude any evidence surrounding how it was that Mr. St. Hilaire obtained the habitual offender status.

And like to ask, Ms. Douglass, if you have any argument other than that which you submitted in your motion to quash the indictment or dismiss the indictment?

MS. DOUGLASS: Well, Judge, I'm not sure that I've reviewed that — that argument in full detail so I guess I do have to put on the record that each of these cases is distinguishable from the issue in this case because all the cases cited pertain to procedural due process issues that were [3] raised by Defendants, some of them even at the appeal stage rather than at the trial.

We're raising a question of fact. This is the quintessential province of the jury in this case, and it is their duty to determine the facts of whether a crime occurred.

It's our position that what the State is attempting to do here is take the case away from the jury entirely and that it's absolutely not possible under the law that — that the acts of the Secretary of State declaring him an habitual offender couldn't be questioned.

They are in question. They will be questioned. That's how I'm going to prove my client is innocent.

THE COURT: So if I understand correctly, there is no question Mr. St. Hilaire was operating? There's no question he was operating on a public way on the first of the year in Fryeburg?

The question becomes: Was he an habitual offender at that time? And you would say that even though he was on — at least on paper an habitual offender at that time and may or may not have known that but certainly was on paper an habitual offender, he — that was an improper designation because some five or so months later the District Court vacated **[4]** one of the three convictions which were necessary to obtain the habitual offender status, that being the final one, operating after suspension; so, therefore, even if Mr. St. Hilaire did not know that he was not an habitual offender — in other words, even if he thought he was an habitual offender — then he gets the benefit of finding out later that that was an incorrect designation?

MS. DOUGLASS: My position is that at the time, there'll be no issue about his operation, about his being on the public way. The issue in this case is going to be whether he was ever guilty of the operating after suspension that put him into this habitual offender category.

It is not as a matter of the vacating of that judgment that we raise this issue but as a matter of the facts that put him into the classification as being an habitual offender and our argument is that those facts existed on March 25, 1986 and are at issue in this case because those facts determine whether or not he is an habitual offender and when he was operating on the 1st of January in 1987, he was innocent because the designation of habitual offender, of which we were going to contest notice to some extent at any rate, was not correct.

[5] That designation as habitual offender is the essence of our — the jury's determination in our trial.

THE COURT: So you would say that — did Mr. St. Hilaire or did Mr. St. Hilaire not know on January 1 that the Secretary of State thought him to be an habitual offender?

MS. DOUGLASS: No. My position is the issue is whether he was, in fact, a habitual offender on January 1, 1987.

It's our position that he was not, regardless of what the State told him.

* * *

(Portions deleted.)

[9] They have to prove it, and I think it's completely up to them to prove it beyond a reasonable doubt.

I think it's — first, I think it's very doubtful that he should have been declared habitual offender and secondly, that's — that's exactly the status that the State has to prove and if — if **[10]** we're not permitted to enter evidence on it, I think then this is just a mockery of justice.

* * *

(Portions deleted.)

[12] THE COURT: Any rebuttal, Miss Douglass?

MS. DOUGLASS: Yes, Your Honor. This is the proper forum. This is a felony trial. The State has overcharged in this case. That's their right to do, and they're not going to be able to prove it because he was not supposed to be declared an habitual offender.

That is the — that status is the essence of this trial and if we're — and she admits that's the second issue. She says the first is operation, and the second is whether there was declared an habitual offender.

That very determination has to be raised in this — in this trial.

Secondly, the law of the case is simply that Judge Delahanty decided there wasn't any summary judgment procedure for a Defendant. I — that's all that was decided then.

He certainly didn't make any evidentiary **[13]** decisions as to what should go into the trial and that's what you're faced with and, you know, I guess this — this case offends me.

I feel somewhat — so strongly about it that I — I'm tempted to make this — in a russh I make statements like that, but the bureaucrats in the administrative law that we live by with regard to our license status doesn't put us in jail.

This young man should'nt be convicted of a crime because of errors that were made at the Secretary of State's office and I think we have to be permitted to present that evidence or — or our system of innocence until proven guilty doesn't mean anything.

THE COURT: Well —

MS. DOUGLASS: I might note I was trying to find — you see, this case has resulted in several different cases because we've attempted to pursue our administrative appeal and, of course, that was denied on the basis that even though we found new evidence in the Secretary of State's files, they wouldn't give us a hearing, which is again another problem that many people have with administrative law that doesn't exist in our court system because we have the possibility of reopening **[14]** a judgment, Rule 59, motion 60(B), and that is an avenue that we aren't pursuing now; however, those are civil matters.

This is a criminal matter in which his criminal record, his — his innocence as a citizen of the State is at stake.

One of those cases suggests that they — and I think it's State v Albert — but that they're not giving any opinion on every single case as to collateral attacks but that it was the decision in that case and I think that shows that this is a case by case determination and what I submit the law — the state of the law now shows to the Court is that if the Defendant is

raising a procedural problem, that may not be law enough to warrant a reversal of a conviction.

However, first of all, those decisions do not turn on evidentiary rulings. Clearly the evidence in those cases went in.

Second, we're raising a factual issue, not a procedural issue. The State would like it to be a procedural issue and would like to cut off our rights to appeal but I submit that's not the — that may be what happens in administrative law, but that's not what happens in the judicial system.

[15] THE COURT: On the — on the motion *in limine*, I'm — I'm not going to decide that based on what Justice Delahanty did because, in part, I don't know the reasons for his ruling. All I know is what his ruling was.

I do know that many of the same issues were raised. There's a slightly different contention but I suspect the argument was reasonably similar.

Many of the cases that were cited were the same cases so there is a — a close connection between what he was confronted with and what I am but I'm not going to base my decision on his ruling because I don't know the reason for it.

The harder question becomes the cases like Maines versus the Secretary of State, which say, Forget about the older distinctions of void and voidable, collateral and direct attack. Turn instead to another Latin phrase called *res judicata*.

At least in that case, which involved a challenge to the teen drinking law, the Maine Supreme Court said, You've got your notice of suspension. You didn't do anything. You're under suspension. Don't go to court under a separate procedure later to challenge that.

As best I can tell, what we're here on, **[16]** presumably at least in part on undisputeed facts, is that in December of 1985, Mr. St. Hilaire was suspended for a number of violations for at least 15 days.

On the 17th, he was apparently eligible for — became eligible to have his license reinstated. He did that on — he paid a reinstatement fee on March 20 of 1986.

On March 25, he was charged with operating after suspension, was convicted of that on April 16. While that judgment has since been vacated, there was apparently no appeal taken at that time from the District Court decision.

On July 31, 1986, his rights to operate were revoked as an habitual offender and presumably he received notice.

He may or may not have had the financial resources to do anything about it; but in any event, he received notice that he could appeal that within 30 days. Apparently he didn't, kept on driving, and got picked up on the 1st of January for operating as an habitual offender.

Then by May the 3rd, serious offense which would constitute the offense of op — of habitual offender was vacated or voided when Judge Scales **[17]** in the District Court voided the operating after suspension conviction thus bringing him down to only two serious offenses rather than the requisite three for habitual offender status.

So there are a couple of questions. One, under Maines versus Secretary of State, is it just too bad for Mr. St. Hilaire he got his notice, he kept on driving, and he had his chance to challenge it and he didn't; and while I could consider that as a factor in sentencing if I wanted to, if and when there was a conviction, that wouldn't affect the trial itself?

The second one becomes a question of the — the fairness of this proceeding and the justness of it of someone who, perhaps after the fact, really only has two/thirds of what he needs to be an habitual offender and not the full amount and I'm — I'm not so offended by that when it appears that an individual knows that the State at the time he's driving thinks he shouldn't be driving and the person is driving it anyway and only after he gets caught — and this isn't just the next day

but months and months pass and apparently keeps on driving — and then only after he getss charged with something does he try to poke into it and get it straightened out.

[18] I also realize that lawyers are expensive, that a number of these procedures are often difficult for the average person to understand and follow; but if I understand cases like Higgins and Maines versus the Secretary of State correctly, and I may or may not, it seems that the motion *in limine* has to be granted and that even if it is as Miss Douglass says, a severe miscarriage of justice, the issues in this case would tend to be more limited to: Was he operating a motor vehicle, was it on a public way, was it while the records of the Secretary of State indicated he was an habitual offender, and perhaps the only additional issue, perhaps of whether he had any notice of that.

But the question of challenging the habitual offender status and saying, Look, jurors, this isn't fair; we later found out that he had him under wrong status, I don't think that's proper.

As the record indicates, the Defendant disagrees with my ruling very strongly. That will be preserved for any appeal in the event that the jury verdict is unfavorable to Mr. St. Hilaire.

Obviously, if there is any sentence, we would obviously stay that sentence to give him time to appeal; but I think I do have to grant that motion **[19]** *in limine* as I understand the case law.

So the motion of the State is granted.

Appendix D.

STATE OF MAINE OXFORD, SS.	SUPREME JUDICIAL COURT SITTING AS THE LAW COURT LAW DOCKET NO. OXF-87-506

STATE OF MAINE, Appellee v. JEFFREY ST. HILAIRE, Appellant	)))))))))	NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT 28 U.S.C.S. SECTION 1257(2)

NOW COMES Jeffrey St. Hilaire and appeals from the Judgment of the Maine Supreme Judicial Court Sitting as the Law Court pursuant to 28 U.S.C.S. Section 1257(2) and Rule 10 of the Rules of the Supreme Court of the United States. Appellant complies with Rule 10 by stating the following:

1. The party taking this Appeal is Jeffrey St. Hilaire, Appellant before the Maine Supreme Judicial Court.

2. The Judgment appealed from is the Judgment of the Maine Supreme Judicial Court affirming a jury verdict finding St. Hilaire guilty of Operating a Motor Vehicle While an Habitual Offender, 29 M.R.S.A. Section 2298 (1987) (Class C), as set forth in its Opinion dated June 30, 1988.

3. The Judgment was entered June 30, 1988, Decision No. 4799.

4. The statutes under which appeal to the United States Supreme Court is taken are: a) 29 M.R.S.A. Sections 58 and; b) 29 M.R.S.A. Section 2298.

5. The questions presented by this appeal are:

a. Whether the Maine Habitual Offender Statute, 29 M.R.S.A. Section 2298 is unconstitutional as applied to St. Hilaire by denying him due process guaranteed in the Fifth Amendment to the U.S. Constitution;
b. Whether the absence of proof of actual notice of the Habitual Offender designation to Appellant violates due process guaranteed by the Fifth Amendment;
c. Whether the absence of proof of the correctness of the Habitual Offender designation violates due process guaranteed by the Fifth Amendment;
d. Whether 29 M.R.S.A. Section 58 is unconstitutional as applied because the State's use of a hearsay certificate of the Secretary of State to prove an essential element of crime charged violates Appellant's Sixth Amendment right to confront the witnesses against him;
e. Whether 29 M.R.S.A. Section 58 is unconstitutional as applied because the statutory presumption established by it, making a certificate of the Secretary of State *prima facie* proof of license status, whether before or after submission of rebuttal evidence by Appellant, violates Fifth Amendment due process; and
f. Whether 29 M.R.S.A. Section 2298 is unconstitutional because denial of Appellant's attempted cross-examination of the Secretary of State on the designation of Appellant as an Habitual Offender violates his Sixth Amendment right to confront witnesses against him;
g. Whether 29 M.R.S.A. Section 2298 is unconstitutional as applied because it is predicated upon an unreliable, uncounseled prior conviction in violation of Appellant's

Sixth Amendment right to counsel and Fifth Amendment due process.

Date: July 5, 1988

ELLIOTT L. EPSTEIN

NERIA R. DOUGLASS

Isaacson & Raymond
75 Park Street, P.O. Box 891
Lewiston, Maine 04243-0891

STATE OF MAINE
OXFORD, SS.

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
LAW DOCKET NO. OXF-87-506

STATE OF MAINE,)
)
Appellee)
) PROOF OF SERVICE
JEFFREY ST. HILAIRE,)
Appellant)

I, Elliot L. Epstein certify that I have served a copy of the Appellant's Notice of Appeal to the United States Supreme Court on the Attorney for the State by depositing the document in a United States Post Office mailbox, with first class postage prepaid, addressed to counsel of record at her post office address as follows:

Janet Mills, Esq.
District Attorney
Patricia Mador, Assistant District Attorney
26 Western Ave.
Oxford County Courthouse
So. Paris, Maine 04281

Date: July 5, 1988

ELLIOTT L. EPSTEIN

Isaacson & Raymond, P.A.
75 Park Street, P.O. Box 891
Lewiston, Maine 04243-0891

Appendix E.

Defendant's Exhibit 5

State of Maine

Department of State

I, the Secretary of State, of the State of Maine, certify that the paper to which this is attached, is a true copy from the records of this office.

In Testimony Whereof, I have caused the Great Seal of the State to be hereunto affixed. GIVEN under my hand at Augusta, this Twenty-four day of March in the year of our Lord one thousand nine hundred and eighty-seven.

Secretary of State

RECORD OF PAYMENTS RECEIVED 039559
MOTOR VEHICLE DIVISION

JEFFREY ST HILAIRE 03/20/86
RFD 1 BOX 24
AUBURN, ME 04210

DATE OF BIRTH: 02/07/64 S534

REINSTATEMENT FEE AMOUNT RECEIVED 25.00

RWY09:41 FIXED SUSPENSION: 12/17/85

State of Maine

Department of State
Motor Vehicle Division
Augusta, Maine 04333

03/25/86

JEFFREY ST. HILAIRE
RFD BOX 24
AUBURN, ME 04210

LICENSE NUMBER: 7613132 EXP: 89
DATE OF BIRTH: 02/07/64

1. YOUR PRIVILEGE TO OPERATE AND REGISTER MOTOR VEHICLES IN MAINE HAS BEEN RESTORED AS OF 03/25/86.

2. THE SUSPENSION(S) LISTED BELOW ARE NO LONGER IN EFFECT: 12/02/85 REPEAT VIOLATIONS

A. YOUR LICENSE WAS NEVER RECEIVED AT THIS OFFICE.

SN/07:48

Reply or questions
Should be addressed to: DRIVER IMPROVEMENT SECTION
Telephone: 207-289-3588

George E. Storer
Deputy Secretary of State

State of Maine

Department of State
Motor Vehicle Division
Augusta, Maine 04333

DRIVING RECORD REPORT-2

07/17/87

JEFFREY ST HILAIRE LICENSE NUMBER: 7613132 EXP:89
496 SABATTUS ST #1 DATE OF BIRTH: 02/07/64
LEWISTON, ME. 04240 LICENSE CLASS: 3 STATUS: S

DATE	DESCRIPTION	POINTS
02/26/86	IMPROPER PASSING (17568/D-LEWI) VIOLATION-DATE: 11/18/85	6
04/16/86	DEFENSIVE DRIVING COURSE COMPLETED	-5
06/18/86	EXCESSIVE NOISE (3748 /D-LEWI) VIOLATION-DATE: 03/29/86	
04/02/87	SPEEDING 59 MPH IN A 45 MPH ZONE (23 /D-BRID) VIOLATION-DATE: 01/01/87	4
07/11/87	SUSPENSION TO 09/09/87 - REPEAT VIOLATIONS (DMV SUSP)	
07/10/87	HEARING-CR EXCESS POINTS RESULTS PETITION DENIED	

* NO ACCIDENT RECORDS TOTAL POINTS 20

Appendix F.

STATEMENT OF ISSUES

I. WHETHER APPELLANT MUST BE ACQUITTED AS A MATTER OF LAW.

A. WHETHER THE INDICTMENT WAS VOID FOR FAILURE OF ANY CORPUS DELICTI.

B. WHETHER THE STATE'S USE OF AN INCORRECT, HEARSAY CERTIFICATE OF THE SECRETARY OF STATE IS INSUFFICIENT PROOF OF GUILT AS A MATTER OF LAW.

II. WHETHER EXCLUSION OF APPELLANT'S PROFFERED, RELEVANT EVIDENCE WAS MATERIAL, SUBSTANTIVE ERROR IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS TO DUE PROCESS AND TO CONFRONT WITNESSES.

A. WHETHER DEFENDANT'S PROFFERED EVIDENCE WAS RELEVANT AND ADMISSIBLE.

B. WHETHER ANY AUTHORITY SUPPORTS THE EXCLUSIONARY RULING.

C. WHETHER THE EXCLUSION DENIED DEFENDANT DUE PROCESS AND THE RIGHT TO CONFRONT WITNESSES AGAINST HIM.

III. WHETHER THE VERDICT VIOLATES APPELLANT'S SUBSTANTIVE DUE PROCESS AND SIXTH AMENDMENT RIGHTS.

A. WHETHER THE PRIOR UNCOUNSELED CONVICTION WAS UNRELIABLE TO PROVE GUILT OR ENHANCED PUNISHMENT.

B. WHETHER THE THIRD CONVICTION USED TO ESTABLISH HABITUAL OFFENDER STATUS WAS NULL AB INITIO.

IV. WHETHER INSUFFICIENT PROOF OF APPELLANT'S RECEIPT OF NOTICE VIOLATES DUE PROCESS.

ARGUMENT
SUMMARY

The State of Maine had no authority to declare that the license of Jeffrey St. Hilaire to operate a motor vehicle was under suspension on March 25, 1986. Lacking such authority, all acts of the State of Maine based upon that unauthorized assertion are null and void. The uncontroverted facts show, and the records of the Secretary of State confirm, that Jeffrey St. Hilaire had a license on March 25, 1986 that was restored by his payment of a reinstatement fee on March 20, 1986 following a brief suspension.

The facts, including correction of Jeffrey St. Hilaire's license record, show that Appellant was not and is not an Habitual Offender. Accordingly, no *corpus delicti* for the crime charged in the instant appeal exists. The indictment was and is void because an essential element of the charge is lacking. Moreover, at the time of trial, no *corpus delicti* existed. The State's use of a self-authenticating, incorrect hearsay certificate cannot establish a *corpus*, and admission in evidence consti-

tuted material, substantive error. Jeffrey St. Hilaire must be acquitted of the charge here and discharged because the facts show clear and reasonable doubt as to his guilt.

The exclusion of Defendant's relevant evidence on the incorrect and unauthorized designation that he was under suspension, and consequently that he was an Habitual Offender, was material, substantive error. Defendant's evidence was relevant and admissible in defense of the charges at issue. The State raised no authority, annd the Court had no authority, for excluding that evidence under Maine Rules of Evidence, Maine Rules of Court or Maine statutory or case law. Exclusion of Defendant's factual evidence and restriction of his examination of State witnesses denied Appellant his constitutional rights: namely, due process under the Fifth Amendment and the right to confront the witnesses against him and to cross-examine them under the Six Amendment of the United States Constitution, as each is applied to the State through the Fourteenth Amendment.

Substantive due process required that Appellant have appointed counsel on the third offense on which the State relied in incorrectly classifying him as an Habitual Offender. Had counsel been appointed, the facts showing Appellant's innocence of that misdemeanor charge would surely have been uncovered and used to acquit him. That violation of substantive due process and the right to counsel as applied to this case prohibits use of Appellant's uncounseled guilty plea for any purpose at any time. Under standards of due process applied to the facts of this case, that uncounseled guilty plea was null *ab initio*. In the alternative, the later exoneration of Appellant, removal of the judgment of guilt and dismissal of those charges were retroactive. Accordingly, the designation of Jeffrey St. Hilaire as an Habitual Offender was void from the time it was made and so continues to the present.

Applied substantive due process and the right to counsel also prohibit enhancement of the offense charged, operating after license suspension, from a misdemeanor to a felony because that mandatory enhancement is based upon an unreliable prior uncounseled conviction. The application of constitutional due process principles to the facts in this case distinguish it from those civil and criminal cases in Maine making facial attacks on entire statutes for lack of procedural due process. The unreliability and the untruth of the prior uncounseled guilty plea removes this case from any likeness to the so-called "collateral attack" cases and make them completely inapposite. Moreover, those cases do not concern evidentiary rulings or exclusions nor do they warrant limitation of the factual defenses in this case. Rather, those cases support the reversal of this conviction on constitutional grounds.

Substantive due process further requires that Appellant receive notice of any designation as an Habitual Offender, which the State failed to prove. The Law Court should reconsider its rulings to the contrary.

For all the above reasons, the judgment of conviction must be reversed and the Appellant discharged.